IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 19175 of 2006(G)

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PETITIONER:

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K.G. THILAKAN, S/O. GOPALAN,
KOCHUKULAM HOUSE, OLLOOR VILLAGE,
THURAVANKADU DESOM, MUKUNDAPURAM TALUK,
TRISSUR DISTRICT, REP. BY THE POWER OF ATTORNEY
HOLDER, MR.N.C. SADANANDAN.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

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1. THE TAHSILDAR, MUKUNDAPURAM.

2. RAMESAN, S/O. NEELAKANDAN,
PUTHUKATTIL HOUSE, OLLOOR VILLAGE,
MUKUNDAPURAM TALUK, TRISSUR DIST.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.N.C.SUMESH KUMAR
SMT.G.RANJITA
GOVERNMENT PLEADER SRI.S.U.NAZER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19175 of 2006(G)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A COPY OF THE CONDITIONAL ORDER DATED 22.3.06.

EXT.P2: A COPY OF THE OBJECTION DATED 31.3.06.

EXT.P3: A COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DT.15.5.06.

RESPONDENT'S EXHIBITS

EXT.R1(a): THE PHOTOCOPY OF LETTER NO.C1/30531/2005/LDS DT.9.9.05 ISSUED BY THE TAHSILDAR, MUKUNDAPURAM TO THE DEPUTY COLLECTOR (GENERAL), THRISSUR.

EXT.R1(b): ROUGH SKETCH SHOWING THE LIE OF THE PATHWAY IN QUESTION AND ALSO THE PROPERTIES BELONGING TO MYSELF AND THAT OF THE PETITIONER.

/TRUE COPY/

P.A TO JUDGE

**R. BASANT, J.**

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**W.P.(C) NO.19175 OF 2006**

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**Dated this the 5th day of March, 2007**

**JUDGMENT**

The petitioner has come to this Court aggrieved by Ext.P3 order. The Executive Magistrate had passed a conditional order under Sec.133 of the Cr.P.C. directing the petitioner to remove the obstruction to a pathway or show cause. On receipt of that order, a copy of which is produced as Ext.P3, the petitioner along with his counsel appeared before the Executive Magistrate. Ext.P2 objection/counter was filed by the petitioner denying the existence of the public right in respect of the pathway. Thereupon, Ext.P3 order has been passed by the Executive Magistrate, in which it is stated that in as much as the vakkalat filed by the counsel for the petitioner does not bear the requisite stamps, the objection filed is rejected.

2. To say the least, the procedure adopted is not correct. If proper stamps have not been affixed in the vakkalat filed, the counsel will not be able to appear and plead on behalf of the petitioner. But the objections filed by the

petitioner cannot obviously be rejected on that ground.

3. In the result, Ext.P3 order is set aside. The objections filed by the petitioner shall be considered by the Executive Magistrate. The petitioner shall be questioned under Section 136 Cr.P.C on the next date of posting. Thereafter, if necessary, the requisite enquiry under Section 137 Cr.P.C shall be conducted and an appropriate order passed under Section 137(2) Cr.P.C. Depending on such order that may be passed under Section 137(2) Cr.P.C., if necessary the Executive Magistrate shall proceed to conduct a further enquiry under Section 138 Cr.P.C and pass appropriate final orders.

4. The petitioner shall be entitled certainly to file a proper vakkalatnama in the prescribed form to engage a counsel to appear for him. This Writ Petition is, in these circumstances, allowed. Ext.P3 order is set aside. The Executive Magistrate is directed to continue with the proceedings in accordance with the above directions. Needless to say, the Executive Magistrate shall proceed to dispose of the matter as expeditiously as possible – at any rate, within a period of 3 months from the date on which a copy of this order is placed before the learned Executive Magistrate.

5. Hand over copies of this Judgment to both counsel.

Sd/-

**rtr/ //true copy// (R. BASANT, JUDGE)**